

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.
THE SAINT REGIS MOHAWK TRIBE,

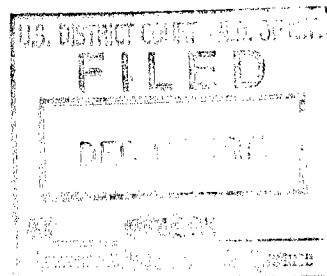
Plaintiff,

vs.

Civ. Action No.
7:02-CV-0845 (TJM/DEP)

PRESIDENT R.C.-ST. REGIS MANAGEMENT
COMPANY; and ANDERSON-BLAKE
CONSTRUCTION CORPORATION,

Defendants.



APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

BARR & ASSOCIATES
125 Mountain Road
Stowe, VT 05672

DANIEL A. SEFF, ESQ.

FOR DEFENDANT PRESIDENT
R.C. - ST. REGIS MANAGEMENT
COMPANY:

MELTZER, LIPPE, GOLDSTEIN
& SCHLISSEL, LLP
The Chancery
190 Willis Avenue
Mineloa, New York 11505

LORETTA M. GASTWIRTH, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

COPIES SENT TO ALL PARTIES

12/2/02
Date

By

ORDER

Currently pending before the court in this action is an application by the plaintiff to quash a deposition subpoena dated October 17, 2003, and issued pursuant to Rule 45 of the Federal Rules of Civil Procedure out of the United States District Court for the Southern District of Florida to Dexter W. Lehtinen, a non-party. The parties, including the deponent, have agreed to submit to the jurisdiction of this court and to forego their right to have the matter determined in the first instance by the court from which the subpoena was issued.

Following the submission of briefs and other relevant materials, oral argument was conducted concerning the matter on November 25, 2003, by telephone, though on the record. At the conclusion of that hearing I issued an oral decision denying plaintiff's motion to quash the deposition subpoena and directing that the deposition be conducted at a mutually convenient date, time and location, to be agreed upon between the parties and the deponent, not later than December 31, 2003. In arriving at that determination, I found that the deponent, as the Tribe's counsel, is entitled to assert sovereign immunity to the extent that it is available to the Tribe. I found further, however, that although the sovereign immunity waiver

provision included within of section 10.8(C) of the Fourth Amended and Restated Management Agreement between the St. Regis Mohawk Tribe and President RC-St. Regis Management Company, dated November 7, 1997, when construed narrowly, does not extend to the matters at issue in this suit, by commencing this action the plaintiff has waived sovereign immunity at least to the extent necessary to address the defenses raised by the defendants in response to plaintiff's claims.¹ I also found that the testimony sought to be elicited from deponent Lehtinen falls comfortably within the scope of discovery permitted under Rule 26(b)(1) of the Federal Rules of Civil Procedure as being related to one or more of the claims and defenses in the lawsuit, including the contemplated ratification defense which defendants will be seeking to add either through stipulation or by motion for leave to amend their answer.

Based upon the foregoing, and the decision rendered orally on November 25, 2003, which decision is incorporated herein by reference, it is hereby

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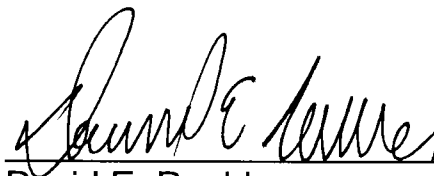
In making this determination I have expressly reserved to the plaintiff the right to argue before District Judge Thomas J. McAvoy concerning the scope of the waiver found, and have not made any finding as to whether the waiver should be deemed to extend to the subject of defendants' counterclaims.

ORDERED as follows:

1) Plaintiff's application to quash the October 17, 2003 subpoena to non-party Dexter Lehtinen, Esq. is DENIED.

2) The defendants are directed to work collaboratively with deponent Dexter Lehtinen and plaintiff's counsel to establish a mutually convenient date, time and location for the taking of Mr. Lehtinen's deposition on or before December 31, 2003. The parties are advised that if difficulties persist in the scheduling of that deposition or disagreement arises concerning its scope, they should promptly apply to the court for further guidance.

3) The clerk is directed to forward copies of this order by first class mail to the counsel for the parties and to Mr. Lehtinen at the following address: Lehtinen, Vargas & Riedi, P.A., 7700 N. Kendell Drive, Suite 303, Miami, Florida 33516.



David E. Peebles
U.S. Magistrate Judge

Dated: December 1, 2003
Syracuse, NY

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